

Supreme  
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No. 89-338 (2)

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IN THE  
**Supreme Court of the United States**

October Term, 1989

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JAMES MURVEL ANDREWS,

*Petitioner,*

v.

STATE OF INDIANA,

*Respondent.*

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**ON PETITION FOR A WRIT OF CERTIORARI  
-TO THE SUPREME COURT OF INDIANA**

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**RESPONDENT'S BRIEF IN OPPOSITION**

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September 19, 1989

## **QUESTION PRESENTED FOR REVIEW**

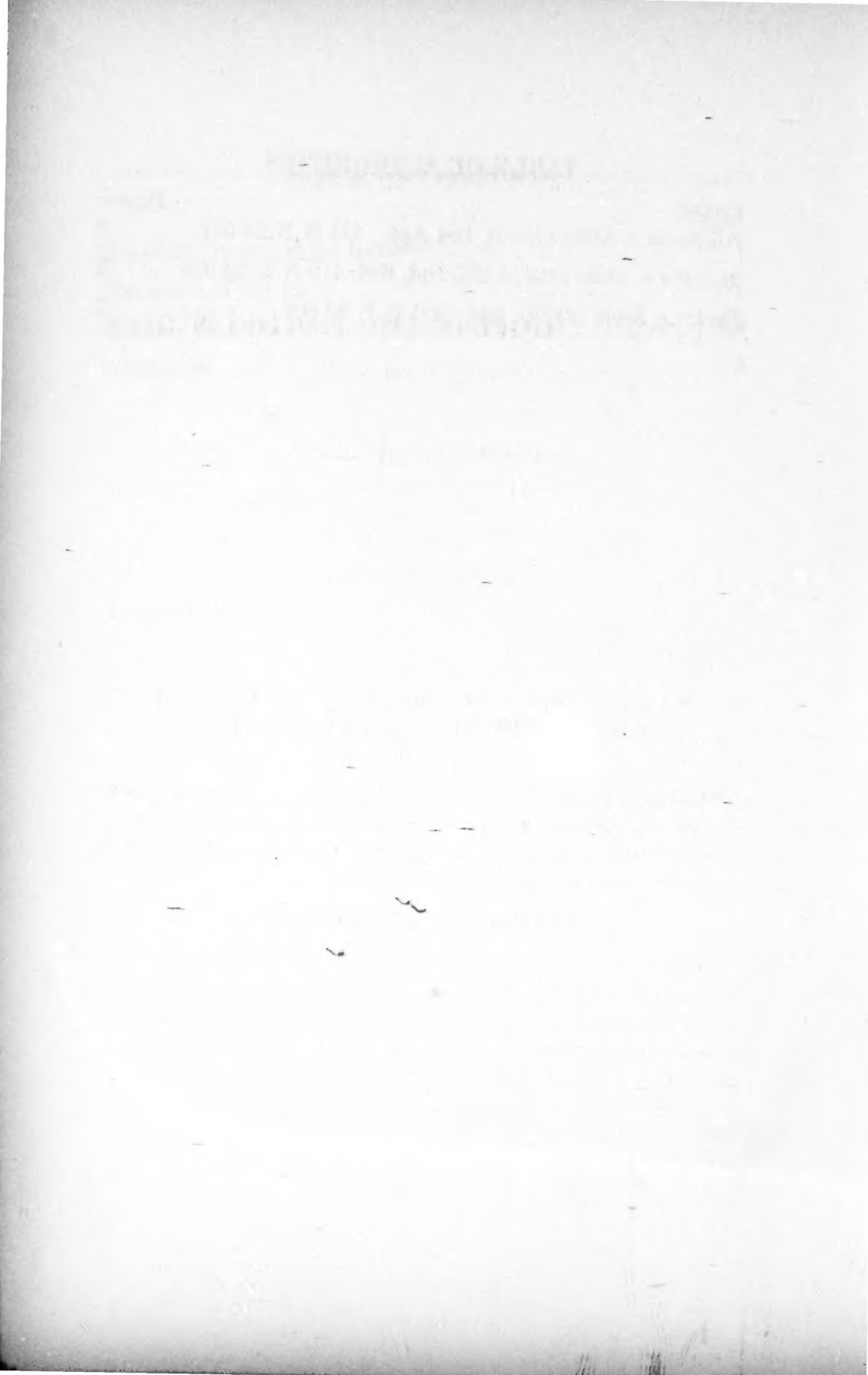
**Whether the petitioner was denied a fair trial when the trial court denied a defense challenge for cause of a prospective juror who was an active police officer with police reserves of a city located in the county where the petitioner was prosecuted.**

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The respondent, the State of Indiana, respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the opinion of the Supreme Court of Indiana. That opinion is reported at 529 N.E.2d 360.

**STATEMENT OF THE FACTS**

The petitioner was charged with two counts of child molesting, a class B felony; three counts of child molesting, a class C felony; one count of attempted child molesting, a class C felony; four counts of incest, a class D felony; one count of child molesting, a class D felony; and one count of attempted incest, a class D felony.

During jury selection, the petitioner, with one remaining pre-emptory challenge, requested the trial court to dismiss for cause a juror who was an active police officer with the Albion City Police Reserves. The city of Albion is located in the county where the petitioner was prosecuted. The juror testified that the duties of the police reserves in Albion are to provide crowd and traffic control at athletic events and parades, the police reserves have arrest powers only in connection with crowd disturbances and traffic violations, and that his position as a reserve police officer would not prevent him from being impartial as a juror. The trial court denied the petitioner's challenge for cause. Consequently, the petitioner exercised his final pre-emptory challenge and the juror was dismissed.

### REASONS WHY THE PETITION SHOULD BE DENIED

Determinations as to the impartiality of a jury, as well as other general qualifications, are committed to the discretion of the trial judge and will not be grounds for reversal absent an abuse of discretion. *Morgan v. State* (1981), 275 Ind. 666, 419 N.E.2d 964; *Atkinson v. State* (1980), Ind.App., 411 N.E.2d 651. In *Porter v. State* (1979), Ind., 391 N.E.2d 801, the defense contended that the trial court erred by refusing to remove for cause a juror who was a volunteer special deputy county sheriff. The Indiana Supreme Court ruled:

There was no evidence presented to show that this juror had any interest or any feeling one way or the other about this case. We . . . cannot say that the court abused its discretion, after observing the interrogation of this juror, in overruling the challenge for cause directed to him. We do not find reversible error on this issue.

*Id.* at 817.

In the present case, the trial judge did not abuse his discretion by refusing to dismiss the juror for cause. The prospective juror stated that the duties of police reserves in Albion are to provide crowd and traffic control at athletic events and parades

and that the reserves have arrest powers only in connection with crowd disturbances and traffic violations. More importantly, the juror testified that he could remain impartial. Thus, the trial court properly denied the challenge of the juror for cause. Accordingly, the petition for a writ of certiorari should be denied.

### CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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